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Aspects of underground process in Romania

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Abstract

We witness more and more often a diversification of the elements of underground economy, as potentiated by the effects of the global economic crisis. If in the previous years we have witnessed manifestations related to tax evasion, gambling or bribery, nowadays the aspects of the underground economy are represented by organizing criminal activities after the model of legal businesses (reception, production, transport, recovery, protection sectors) and white-collar crime. Sometimes these activities of organized crime surpass the capacity of the state to limit them as the specialists in the tax and legal areas prefer to offer their services to private employers who afford to pay them more than the state. Last but not least the globalization has created conditions in which money, weapons or human trafficking runs optimally between international groups of organized crime through the easy access to international networks of data or transport. Moreover, organized crime groups became focused on the control of financial institutions or banks, under the cover of which they could transfer huge amounts of money. In this respect, it appears that besides its positive features, globalization has created an environment in which organized crime groups have easily extended beyond state borders becoming real transnational crime industries.

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1. Introduction

One can easily see that in the developing countries the evolution of the informal sector (Rădulescu D.L., 2007) was determined by other causes than in the developed countries. Initially the informal sector was fueled by the collapse of the dictatorial regime, which created a power void at central and local level, where at least regarding the large corruption the possibilities of implementation were extremely limited. Underground economy was a partially accepted phenomenon at the level of small scale corruption understood as offering little “gifts” to public service clerks or even doctors.

Nonetheless, underground economy represented the last means to allow subsistence (Cazenave J., 1993) if the formal state system failed to provide for almost anything. In this case we do not refer to industrial goods but also to those necessary to make a living like food or medicine. This situation gave rise not only to the preconditions of an underground economy but also to its being objectively necessary as sole distributor of certain goods.

Subsequently, the collapse of the communist regime was followed by a transition period (Schneider F., Enste D.H., 2005) towards a market economy which meant the implementation of a totally different system than before. This system was not only unknown to the larger masses but also blamed as an absolute evil of the capitalist society. The mentality acquired over the years in communism, as well as the acceptance, sometimes, of severe moral compromises in order to obtain benefits in the single partied society has enabled the hijacking of the transition process from its finality.

As a consequence, transition has become a manifestation with strange effects, understood differently by the masses and implemented in the sense of strengthening the economic resources of those already part of the previous regime's system. This chaos was apparently not only maintained naturally but also artificially with the purpose of leading astray the attention from the great corruption cases. Moreover, when these were unveiled, usually by the media, the reaction of the state was much delayed which triggered an apparent lack of reaction in the civil society as well.

Regarding the evolution of the underground economy towards the transition to the market economy, this is characterized by subsistence economy in a large traditional sector (Rădulescu I.G., 2007) where the state is almost absent. Apparently the existence of underground economy increased economic development under tax restraints at the level of real economy. We thus envisage a new paradigm of development in the perspective of opening new markets, with a continuous increase in the corruption phenomena, insufficient legislative regulations and the proliferation of criminal structures.

Historically, in Romania, corruption phenomena have existed from immemorial times, even from the emergence of the first forms of state organization. Numerous researchers declared that the evolution of underground economy was mainly due to an unfortunate position geographically, economically, politically and socially. As a consequence, the 17th and 18th centuries are known for a very frequent change of Romanian leaders, who because of the country's location - at the crossroads of Europe and Asia - were at the disposal of the Ottoman Empire. This fealty influenced the possibility to obtain the throne and the noblemen bought their way to the throne from the Turkish sultans. As a consequence, over the years, the principle according to which advantages could be obtained by offering gifts to those in positions of authority. Not even the subsequent closeness of some Romanian intellectuals to the mentality of western countries where they used to study had any major impact on the larger masses.

Maintaining a system of underground economy has continued during communism and took amplitude in the transition to the market economy, contradicting the more or less expressed efforts assumed by the political regime. The measures necessary to combat this phenomenon have been implemented with priority because of the insistent requests of EU officials especially after Romania started negotiations to join the European structures.

2. Forms of underground economy

Globalization has been felt at the level of national states including in the upward evolution of the majority of underground economy forms. This trend has caused disappearance of boundaries between national and international level and intertwining in political, economic or social national issues. Some forms of underground economy like tax evasion and corruption have kept their importance as before but they were seconded by new forms like moonlighting, drug trafficking and terrorism.

This situation is not only found in least developed countries; some forms of underground economy are to be met and sometimes tolerated also in some developed OECD (Maria Rosaria Carillo, Maurizio Pugno, 2002) states (see Italy, but also Greece, Spain and Portugal). Among OECD states (Friedrich Schneider, Dominik H. Enste, 2005) the southern ones have registered the highest values as the South is characterized by poor economic development whereas the regulation level is similar to northern countries.

2.1. Corruption

Thus, regarding *corruption in Romania*, the favoring causes were related to poverty, accident or unemployment, lack of economic, political or social development (Donatela della Porta, 1996). These aspects have generated acts of corruption in the form of bribes, extortion, nepotism, influence peddling and fraud, or monopoly on the goods or services.

The causes are related on the decentralization, the level of poverty and the high rate of unemployment; this phenomenon has a greater impact within customs authorities and a minimal one among the military.

As a consequence, the costs of corruption (Emil D., 2001) are in the area of reduction of foreign and domestic investments, bringing business towards the underground economy, reducing public revenues, the impossibility to provide essential goods, increase of taxes, increasing transaction costs, as well as economic uncertainty.

From the point of view of the impact on state the most severe form is white-collar crime which occurs under the protection of public authorities, but also of decision and policy makers as a contemptuous and indifferent attitude towards the civil society, public property and the law. This type of corruption creates large-scale damage with negative consequences because of the possibility that criminal groups go up to the tops of society and capture the vital institutions of the state.

Regarding the corruption of political parties, Romania (<http://gcb.transparency.org/gcb201011/infographic>) is behind some states like Argentina, Australia, Bosnia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Poland or Portugal but ahead of Spain, United Kingdom or the United States.

Corruption Perception Index (CPI), which is measured (<http://cpi.transparency.org/cpi2012/results>) in terms of frequency and amount of bribery in public and private sectors, places Romania (score 44) behind developed countries in Western Europe like Finland (90), Sweden (88), Switzerland (86), Germany (79), Britain (74) or France (71). However, in comparison with the former socialist countries, Romania is after Estonia (64), Slovenia (61), Hungary (61), Czech (49) but Bulgaria (41), Moldova (36), Russia (28) or Ukraine (26).

2.2. Unfair competition

Regarding the *unfair competition in the business environment* we must envisage the right of natural or legal persons to conduct any commercial activity freely, the law interfering only if the rights of competitors are violated.

Specific trade obligations are required to protect the interests of economic agents and in particular Law 11/1991 on combating unfair competition that sanctions illegal methods of attracting customers and Law 21/1996 on competition, which suppresses (Capăț ăna O., 1992) monopolistic anti-competitive practices.

In the commercial circuit, according to Law no.11/1991 traders must pursue their activities in good faith, respecting the requirements of fair competition rules prohibiting acts as unilateral non-performance of contract or unfair procedures, breach of trust, incitement to crime and acquisition of trade secrets by third parties who knew that the purchase involves such practices, affecting the position of competing traders on the market.

The acts of unfair competition (Carpenaru D. S., 2007) regulated by the law are confusion, trade libel, disorganization of the competing business and stealing customers from competition.

Confusion is the act whereby a person imitates the identifiers of a rival trader or its products and it is considered unfair competition if it creates confusion among customers. We can think at the act that creating confusion about the origin of products by imitating their forms of identification (labels) or their presentation style.

On the other hand, *trade libel* is spreading false information regarding the quality of commercial operations carried out by a concurrent economic agent in order to discredit him if there is no definitive court decision to testify it.

Disorganization of the competing business means offering benefits to their commercial competitor's employees

in order to disclose trade secrets, steal customers or prevent raw material supply with the intention to destabilize its competitor's activity.

Stealing customers from another merchant is an act of unfair competition involving the promise of granting benefits to customers provided they get other buyers or conditioning the sale of certain products at reduced prices by the purchase of other goods.

Are considered offenses punishable by imprisonment from 6 months to 2 years or a fine acts as the use of a firm, invention, trademark in order to create confusion, putting into circulation of counterfeit goods, use for commercial purposes of secret information without the consent of its legitimate owner, disclosure of trade secrets by persons belonging to public authorities or the use of false patent. Also are considered contravention (Angheni S., Volonciu M., Stoica C., 2003) the acts of unfair competition a dealer's employee providing services to a competitor or the acceptance of such offerings, the disclosure of a trade secret without the consent of the legitimate holder, communication of public statements by a merchant on his industry designed to mislead at the expense of his competitors, spreading false statements by a dealer on a competitor or his goods, offering gifts to a trader's employee in exchange secrets of the industrial processes of his employer or hiring a trader's employees in order to disrupt his business activity and the economic force of the economic agent acting.

The law protecting freedom of competition and forbidden acts of tacit agreements and concerted practices in the relevant market between economic agents like direct or indirect concerted fixing of the selling or purchase price, tariffs and rebates, controlling production, distribution and technical development, dividing supply sources according to territorial criteria, application of unequal conditions to equivalent transactions, conditioning the conclusion of contracts on certain clauses stipulating additional benefits against commercial usage, participation in a concerted manner with rigged bids in auctions, or elimination or limiting access of other competitors in the market, unless positive effects of this acts prevail over the negative ones.

The law regulated (Capăț ăna O., 1996) *the monopolistic agreements* like collective acts of independent economic agents, aimed to restricting or distorting competition, represented by the agreements between them or concerted practices in a relevant market.

In the case of the *abuse of dominant position*, the economic agents are so powerful that they are able to determine the other trade behavior in the market. In this respect the abuse of a dominant is determined through acts like imposing, directly or indirectly, the sale or purchase prices, tariffs or other unfair contract terms, limiting production, distribution or technical development of competitors, applying to commercial partners, unequal conditions to equivalent transactions, engaging in predatory pricing to eliminate competitors, export or sale below the cost of production or exploiting the state of dependency of commercial partners.

Non-compliance with these obligations gives rise to criminal or civil liability, in special in case of participation with fraudulent intent to the organization of anti-competitive practices or abuse of dominant position and the punish will be imprisonment from 6 months to 4 years or a fine and the obligation to guilty trader to stop or undo these acts.

Also we can have civil liability in the case of failure to notify a merger (Rădulescu D.L., 2008), providing inaccurate or incomplete information following a request or a notification, providing inaccurate or incomplete information requested by the Competition Council or during inspections or refusal to submit to an inspection.

2.3. Money Laundering

Money laundering is considered by some authors (Debare M., 1992) as not being a part of the main forms of the underground economy as only implying the end result of it. We consider that this phenomenon consisting mainly of depositing money in a bank that is not interested in their origin, as is the case with offshore financial centres, represents an operation meant to concealing gains.

From the point of view of the means used to launder money we have in mind both the purchase of luxury goods with money resulted from traffic or to purchase high value items or to transfer money abroad. Transferring these amounts in various banking institutions (Biș a C., Costea I., Capota M., Danciu B., 2005), subsequent sale of goods purchased at prices well below their acquisition price as well as using successive commercial operations and creating the appearance of legality for these operations are as many ways of dissimulating the origin of money.

Money laundering mainly entails operations like *false overcharge*, *false lawsuit*, *layering* or *reverse money laundering* or false export in order to dissimulate the origin of money. As a consequence, false overcharge represents a method consisting in selling false contemporary art works at a high price while at the same time returning the art works from the buyer to their previous owner. The fictive buyer cashes a commission from the

vendor as both parties are involved in this type of transaction.

Regarding the false lawsuit, it consists in depositing illegally in the bank account of a company of an amount of cash by a person willing to perform money laundering; a lawsuit follows, filed by the money depositor against that company. The deal between them is that the company accepts its fault and therefore pays an amount equivalent to the one deposited.

Layering is the operation by which the money launderer sets up a bogus company in Cyprus, in the name of which opens a bank account in another country. Money laundering is accomplished between the bank where the account was opened and the person that founded the company. Thus, the bank sends to the money launderer a courier, who cashes the amount to be laundered. The money, minus the bank commission will subsequently be transferred in the accounts of the company.

In the same respect, *reverse money* laundering means transferring money between the international branches of banks until the origin of the money can no longer be traced.

False exports represent the operation related to VAT return mechanism when a company exploits the weak points of the market and VAT can be obtained through a system of false invoices.

As a novelty from the moment of EU admission money laundering included also mechanism through which subventions from the European Union meant for high-streets or tourism were hijacked. These aspects take place the moment organized crime involves goals such as the abolition of regulations, removing state control, banking secrecy, swaps or offshore accounts.

Conclusion

The evolution of underground economy in Romania becomes more and more related to the globalization and regionalization process. The globalization process is used by criminal groups as a potentiating factor of organized crime activities. The criminal groups have come to meet globalization by organizing international networks in order to manage their own activity with increased efficiency and mainly using sophisticated technological means and exploiting the free borders. New communications systems and free borders have created additional opportunities for these groups which become more and more connected than they ever were.

Hence, transnational organized crime groups connected with national ones to determine the emergence of new forms of crime, as well as the involvement of Romanian crime groups with international ones. There has been a qualitative leap regarding the evolution of underground economy phenomena.

About the existence of corruption acts in Romania, these tended to escalate due to a widespread attitude of tacit acceptance of this phenomenon by the population. Also, at the level of society there is still believed that solving personal problems or achieving a career will entail agreeing to use some forms of underground economy.

The situation is potentiated as well by certain favorable elements such as inconsistent tax laws, increasing corruption due to decentralization, the parallel economy inherited from the previous regime or lack of specialists in the field of taxation. On the other hand we can see an unprecedented development of underground economy because facts like drug money that needed to be laundered, political party financing and decentralization.

Apparently no one understood that that the democratic system itself was based on the reaction of civil society to the phenomena of underground economy; however, the groups belonging to the old regime seized the society economically and politically after 1990 and therefore this desideratum is hardly attainable.

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